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Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

LAYFIELD & BARRETT, APC,

Debtor.

Case No.: 2:17-bk-19548-NB

Chapter 11

**CHAPTER 11 TRUSTEE'S EIGHTH
STATUS REPORT**

Date: February 5, 2019
Time: 2:00 p.m.
Place: United States Bankruptcy Court
Edward R. Roybal Federal Building
255 E. Temple Street
Courtroom 1545
Los Angeles, California
Judge: Honorable Neil W. Bason

Richard M. Pachulski, the duly appointed chapter 11 trustee (the "Trustee") in the above-captioned bankruptcy case (the "Case") of Layfield & Barrett, APC (the "Debtor" or "L&B"), hereby files his eighth chapter 11 status report (the "Status Report")¹, which updates the information provided to this Court in the *Chapter 11 Trustee's Seventh Status Report* [Docket No. 363] (the "Seventh Status Report"), filed on October 22, 2018, in accordance with the Court's *Order Setting Case Status Conference and Procedures* entered on August 14, 2017 [Docket No. 28] (the "Case Status Conference Order").

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Seventh Status Report.

The Trustee respectfully represents the following:

I.

BACKGROUND

A. Jurisdiction and Venue

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for any relief sought or granted herein are sections 105(a) and (d) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”).

B. The Commencement of the Case and Appointment of the Chapter 11 Trustee

On August 3, 2017, petitioning creditors The Dominguez Firm (“TDF”), Mario Lara, Nayazi Reyes and Maria A. Rios (the “Petitioning Creditors”), filed an involuntary petition for relief under chapter 7 of the Bankruptcy Code against L&B. That same day, the Petitioning Creditors filed an *Emergency Motion for Appointment of an Interim Trustee Under 11 U.S.C. § 303(g) and Granting Emergency Relief* [Docket No. 3] (the “Trustee Motion”). In the Trustee Motion, the Petitioning Creditors assert, among other allegations, that “[s]ettlement proceeds have not been distributed and may no longer exist, vendors and other creditors have not been paid and clients are effectively unrepresented in some 80 pending cases,” and that, consequently, the appointment of a trustee is “essential to protect and preserve property of the ... estate and to prevent concealment, waste, loss or conversion of the assets of the estate” Trustee Motion at 1.

In response to the Trustee Motion, the Debtor filed a *Motion to Convert Case Under 11 U.S.C. §§ 706(a) or 1112(a)* on August 8, 2017 [Docket No. 19] (the “Conversion Motion”), seeking to convert the Case to one under chapter 11 of the Bankruptcy Code. The Court entered orders granting the Conversion Motion [Docket No. 25], and denying the Trustee Motion [Docket No. 24].

On August 16, 2017, the Debtor, Petitioning Creditors, and secured creditor, Advocate Capital, Inc., entered into a *Stipulation for the Appointment of a Chapter 11 Trustee* [Docket No. 38], which the Court approved by order on August 17, 2017 [Docket No. 42].

On August 21, 2017, the United States Trustee (the “UST”) filed its *Notice of Appointment of Chapter 11 Trustee*, appointing Richard M. Pachulski as Chapter 11 Trustee in the Case [Docket No. 51]. Also on August 21, 2017, the UST filed an *Application for Order Approving Appointment of Chapter 11 Trustee* [Docket No. 53], which application was granted by the Court’s order entered the following day [Docket No. 56].

On August 28, 2017, the Trustee filed his *Acceptance of Appointment as Chapter 11 Trustee* [Docket No. 63].

II.

CASE STATUS

Since his appointment, the Trustee and his counsel have continued to engage in discussions with, and informally request documentation and information from, persons and entities associated with the Debtor, as well as third parties, regarding the Debtor’s assets, liabilities and business operations. To date, the Trustee has received information from third parties and continues to review and gather additional materials relating to the Debtor, its former business operations, assets and potential liabilities. The Trustee and his counsel are continuing to ascertain the nature and extent of the estate’s claims for attorneys’ fees and costs (the “Estate Fee and Cost Claims”) asserted in litigation in which the Debtor previously was involved. The Trustee also has commenced litigation to avoid and recover certain transfers.

Significant events in the Case since the prior case status conference include:

A. Cash on Hand

As of January 28, 2019, the Trustee holds \$502,214.43, a substantial portion of which arises from Estate Fee and Cost Claims.

B. Complaint Against Layfield V, LLC, for Avoidance and Recovery of Fraudulent Transfers and for Unjust Enrichment

On February 22, 2018, the Trustee commenced an adversary proceeding in an effort to avoid and recover the transfer of certain office condominium properties located in Park City, Utah (“Utah Properties”), from the Debtor to Layfield V, LLC (“Layfield V”), an entity owned by Philip J. Layfield (“Layfield”). On May 25, 2018, the Court entered *Judgment After Default* against Layfield

V and Layfield, thereby avoiding the transfers of the Utah Properties and transferring and revesting title of the Utah Properties in the estate. The judgment was recorded in the Summit County, Utah, property records on June 4, 2018.

On October 4, 2018, Layfield filed a motion to set aside the judgment after default against Layfield V and Layfield, which the Trustee opposed. At a hearing held before the Court on October 24, 2018, the Judge denied Layfield's motion to set aside default and entered its order memorializing such denial on December 12, 2018.

On November 2, 2018, the Trustee and Wesley H. Avery, the chapter 7 trustee appointed in the Layfield Case ("Avery"), entered into a stipulation to include in the judgment against Layfield V a storage unit at the Park City, Utah, property also transferred by Layfield from the Debtor to Layfield V. The Court approved the stipulation on November 19, 2018, and entered judgment against Layfield V as to the storage unit the following day.

C. Complaint for Avoidance and Recovery of Preferential Transfers (Young)

On July 23, 2018, the Trustee commenced an adversary proceeding (the "Young Proceeding") seeking to avoid and recover transfers made within the 90 days prior to the Petition Date in the aggregate amount of \$487,848.47. Discovery in the Young Proceeding is continuing with a status conference set for April 30, 2019.

D. Complaint for Avoidance and Recovery of Preferential Transfers (Watson)

On January 24, 2019, the Trustee commenced an adversary proceeding (the "Watson Proceeding") in this Court against Grace Watson, a creditor of L&B, seeking to avoid and recover transfers made within the 90 days prior to the Petition Date in the aggregate amount of \$151,302.53. Watson's answer to the complaint is due by February 25, 2019.

E. Sale of the Utah Properties

On August 21, 2018, the Court granted the Trustee's motion to employ KW Park City Keller Williams Real Estate to market the Utah Properties for sale. On January 15, 2019, the Trustee filed a motion to sell one of the Utah Properties (subject to overbids which may include one or more of the other Utah Properties) to Sterling Holdings LLC or its assigns, free and clear of all liens, claims, interests and encumbrances, and to pay through escrow, from the proceeds of the sale transaction

1 and without further order of the Court, any broker commissions, escrow fees, title insurance
2 premiums and other ordinary and typical closing costs and expenses (the “Suite 200 Sale Motion”).
3 The hearing regarding the Suite 200 Sale Motion is currently set for February 5, 2019, at the same
4 time as the status conference in the Case.

5 **F. Wells Fargo Bank Relief From Stay**

6 On November 27, 2017, Wells Fargo Bank, N.A. (“WFB”), filed two separate motions for
7 relief from stay, seeking relief from the automatic stay to foreclose upon the Utah Properties.² On
8 February 15, 2018, after several continued hearings, the Court granted in part, and denied in part
9 WFB’s motion, partially granting relief to allow WFB only to record its Notice of Default regarding
10 the Utah Properties. The Court has continued the hearings regarding the motions from time to time,
11 and they currently are set for February 5, 2019, at the same time as the status conference in the Case.

12 **G. Motion to Terminate Trustee**

13 On September 27, 2018, Layfield filed a motion to terminate the Trustee and immediately
14 convert the Case to a case under chapter 7 of the Bankruptcy Code (the “Termination/Conversion
15 Motion”). On December 12, 2018, the Court denied the Termination/Conversion Motion.

16 **H. Layfield Complaint Against Certain Lenders and the Trustee**

17 On October 11, 2018 Layfield commenced an adversary proceeding against the Trustee,
18 Advanced Legal Capital, LLC, US Claims Opco, LLC and DRB Capital, LLC, seeking declaratory
19 relief and alleging breach of the covenant of good faith and fair dealing, interference with
20 contractual relations, intentional interference with prospective economic advantage and negligence.
21 On December 7, 2018, the Court entered an order suspending the response and other pre-trial
22 deadlines in the proceeding. A status conference in the proceeding is scheduled for March 26, 2019,
23 at 2:00 p.m.

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28 ² WFB also filed a motion for relief from the automatic stay with respect to real property located in Arizona on
November 21, 2017 [Docket No. 142], which was granted by the Court on December 13, 2017 [Docket No. 175].

III.

OTHER INFORMATION RELATING TO THE CASE

A. Criminal Action Against Layfield

The indictment in the criminal action by the United States (the “Government”) against Layfield was filed on March 9, 2018. On March 23, 2018, the court set an initial trial date of May 15, 2018, which was continued to August 14, 2018 at the request of Layfield’s counsel. On July 30, 2018, Layfield and the Government entered into a stipulation to continue the trial date from August 14, 2018, to February 26, 2019. On January 7, 2019, Layfield and the Government entered into a third stipulation to continue the trial date from February 26, 2019, to September 10, 2019.

B. Philip Layfield Involuntary Bankruptcy Case

On May 21, 2018, Wellgen Standard, LLC (“Wellgen”), Alliance Legal Solutions LLC and the Trustee filed an involuntary chapter 7 petition against Layfield. On May 30, 2018, this Court granted Wellgen’s motion for order appointing an interim trustee in the case (the “Layfield Case”). On June 8, 2018, the Court appointed Avery as interim trustee. On December 12, 2018, the Court granted Wellgen’s motion for summary judgment and entered the order for relief requested in the Involuntary Petition.

On December 12, 2018, the Court denied Layfield’s motions to dismiss the Layfield Case and to transfer venue of the Layfield Case to the District of Delaware, without leave to amend.

On January 7, 2019, Avery filed a *Notice of Assets* [Layfield Docket No. 179], in response to which the Court set a general claims bar date in the Layfield Case of April 12, 2019.

Layfield’s section 341(a) meeting of creditors was scheduled for January 22, 2019. However, Layfield failed to appear and Avery continued the meeting to March 6, 2019.

1 **C. Christine Layfield Delaware Bankruptcy Case**

2 On December 14, 2018, two days after this Court denied Layfield's motion to transfer venue
3 of the Layfield Case to Delaware, Layfield's wife, Christine Marie Layfield, filed a voluntary
4 chapter 7 bankruptcy case in the District of Delaware.

5
6 Dated: January 29, 2019

PACHULSKI STANG ZIEHL & JONES LLP

7
8 By: /s/ Malhar S. Pagay
Malhar S. Pagay

9 Attorneys for
10 Richard M. Pachulski, Chapter 11 Trustee

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document entitled (*specify*): **CHAPTER 11 TRUSTEE'S EIGHTH STATUS REPORT** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **January 29, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **January 29, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

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1875 Connecticut Ave. NW, 10th Fl
Washington, DC 20006

Philip J. Layfield
c/o Maximum Legal Holdings, LLC
8 The Green
Suite 6426
Dover, Delaware 19901

Layfield & Barrett, APC
fka Layfield & Wallace, APC
fka The Layfield Law Firm, APC
Attn: Philip Layfield, Officer of Record
1875 Connecticut Ave. NW, 10th Fl.
Washington, DC 20006

Layfield & Barrett, APC
fka Layfield & Wallace, APC
fka The Layfield Law Firm, APC
Attn: Philip Layfield, Officer of Record
c/o Maximum Legal Holdings, LLC
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Dover, Delaware 19901

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) , **2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 29, 2019
Date

Sophia L. Lee
Printed Name

/s/ Sophia L. Lee
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Mailing Information for Case 2:17-19548

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.